

CHAPTER 47

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

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GENERAL PROVISIONS

47-0005 Application

The Rules of this chapter implement City policy regarding the Procurement of Goods and Services and govern the Procurement of Personal Services Contracts. In addition to the provisions of this chapter, Personal Service contracts relating to Services to be performed by Architects, Engineers, Land Surveyors and related service providers are subject to the provisions of chapter 48. As a practical matter, however, the supplemental provisions of chapter 48 apply only in limited circumstances, generally where the City receives State Highway Funds to hire an Architect, Engineer or Land Surveyor.

47-0010 Examples of Personal Services Contracts

Typically, the primary purpose of a Personal Service Contract is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

A. Personal Services Contracts.

Additional examples of Personal Services Contracts include, but are not limited to, the following:

1. Professional Services

Contracts for services performed in a professional capacity including services of an accountant, bookkeeper, financial analyst, attorney, paralegal, physician, nurse, medical care provider, mediator, arbitrator, facilitator, land use planner, plan reviewer, inspector, third party workers' compensation claims administrator, pollster, public relations professional, expert witness, food or beverage concessionaire, real estate agent, appraiser, information technology consultant, or broadcaster;

2. Performing Arts

Contracts for services as an artist in the performing or fine arts including any person identified as a photographer, filmmaker, painter, weaver, or sculptor (Note: Selection procedures for the requirements of the One Percent for Art in Public Buildings program are found in OAR 190-020-0015.);

3. Research Services

Contracts for specialized, creative and research-oriented services;

4. Consulting Services

Contracts for services as a consultant, including human services or management consultant; and

5. Education and Training Services

Contracts for educational services, including training.

B. Non-Personal Services Contracts.

The following are examples of Contracts that are not Personal Services Contracts:

1. Equipment and Supplies

Contracts, even though in a professional capacity, if primarily for equipment, supplies or materials; e.g., a Contract to supply computer hardware and bundled, mass-marketed standard software is not a Personal Services Contract, but a Contract with a technology consultant to design or develop a new computer system is a Personal Services Contract; or

2. Trade Services

Contracts with a temporary service or personnel agency to supply labor that can generally be done by any skilled worker; e.g., a Contract to supply an office receptionist during the incumbent's extended absence.

47-0015 Contract Form

The Purchasing Agent shall provide forms for contracts for Personal Services. Prior to soliciting, the form may be submitted to City Attorney for review and possible revision to reflect the nature of the transaction.

47-0020 Resolution of Uncertainty of Contract Status

In the event of uncertainty or disagreement as to the status of any particular Contract or class of Contracts, the City Attorney shall determine whether the Contract calls for the performance of Personal Services or for the purchase, lease or sale of personal property, Public Improvements or services other than Personal Services. The Contract Review Board may ratify the City Attorney's determination.

SOURCE SELECTION

47-0250 Methods of Source Selection; Feasibility Determination; Cost Analysis

A. Authorization

Except as permitted by BPC 47-0265 – BPC 47-0290 and chapter 50, the City shall Award a Contract for Goods or Services, or both based on Offers received in response to either competitive sealed Bids or competitive sealed Proposals.

B. Written Cost Analysis.

Before conducting the Procurement of a Contract for Services that is subject to sections 2 to 4 of Oregon Laws 2009, chapter 880, the City must, in the absence of a determination under section 3 of that enactment that performing the services with the City's own personnel and resources is not feasible, conduct a Written cost analysis.

1. Basic Comparison.

The Written cost analysis must compare an estimate of the City's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, the City may proceed with the Procurement for Services only if it determines that the City would incur more cost in performing the Services with the City's own personnel than it would incur in procuring the Services from a Contractor.

2. Costs of Using City's Own Personnel and Resources.

When estimating the City's cost of performing the Services, the City shall consider cost factors that include:

- a. The salary or wage and benefit costs for the employees of the City who would be directly involved in performing the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.
- b. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the services.
- c. The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.
- d. Any costs related to stopping and dismantling a project or operation because the City intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.
- e. The miscellaneous costs related to performing the Services. These costs exclude the City's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the City performed the Services.
- f. Oregon Laws 2009, chapter 880, section 3 (1) (a) provides that an estimate of the City's costs of performing the Services includes the costs described in subsections (A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. The City may consider other reliable information that bears on the cost to the City of performing the Services. For example, if the City has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the City may consider those actual costs in making its estimate.

3. Costs a Potential Contractor Would Incur.

When estimating the costs a potential Contractor would incur in performing the Services, the City shall consider cost factors that include:

- a. The average or actual salary or wage and benefit costs for Contractors and Contractor employees:
 - i. Who work in the business or industry most closely involved in performing the Services; and
 - ii. Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.
- b. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.
- c. The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in subsection (2) (c) (A) and (B) of this rule over the expected duration of the Procurement.
- d. Oregon Laws 2009, chapter 880, section 3 (1) (b) provides that an estimate of the costs a potential Contractor would incur in performing the Services includes the costs described in subsections (A) through (C) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. The City may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the City, in the reasonably near past, received bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the City may consider the pricing offered in those bids or Proposals in making its estimate. Similarly, the City may consider what it actually paid out under a Contract for the same or similar Services.

C. Decision Based on Cost Comparison.

After comparing the difference between the costs estimated for the City to perform the Services under section (2) (b) and the estimated costs a potential Contractor would incur in performing the Services under section (2) (c), the City may proceed with the Procurement only if the City would incur more cost in performing the Services with the City's own personnel and resources than it would incur in procuring the Services from a Contractor.

D. Exception Based on Salaries or Wages and Benefits.

If the sole reason that the costs estimated for the City to perform the Services under section (2) (b) exceed the estimated costs a potential Contractor would incur in performing the Services under section (2) (c) is because the average or actual salary or wage and benefit costs for Contractors and employees estimated under subsection (2) (b) (A) are lower than the salary or wage and benefit costs for employees of the City under subsection (2) (c) (A), then the City may not proceed with the Procurement.

E. Exception Based on Lack of City Personnel and Resources:

Reporting. In cases in which the City determines that it would incur less cost in providing the Services with its own personnel and resources, the City nevertheless may proceed with the Procurement if, at the time the City intends to conduct the Procurement, the City determines that it lacks personnel and resources to perform the Services within the time the City requires them. When the City conducts a Procurement under this section, the City must:

1. Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the City requires them and of the basis for the City's decision to proceed with the Procurement.
2. The City shall, provide to the Contract Review Board, each calendar quarter, copies of each Written cost analysis and Written determination.

F. Exceptions Based on Lack of Feasibility

The City may proceed with the procurement of a Contract for Services without conducting a cost analysis under Oregon Laws 2009, chapter 880, section 3, if the City makes Written findings that one or more of the special circumstances described in Oregon Laws 2009, chapter 880, section 4, make the City's use of its own personnel and resources to provide the Services not feasible.

G. Exception Based on Other Grounds

The special circumstances identified in Oregon Laws 2009, section 4 that require the City to procure the Services by Contract include any circumstances, conditions or occurrences that would make the Services, if performed by the City's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the City.

47-0255 Competitive Sealed Bidding

A. Authorization.

The City may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by subsection B of this section. The City shall provide public notice of the competitive sealed bidding solicitation as set forth in BPC 47-0300.

B. Invitation to Bid.

In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

1. General Information

- a. Notice of any pre-Offer conference as follows:
 - i. The time, date and location of any pre-Offer conference;
 - ii. Whether attendance at the conference will be mandatory or voluntary; and
 - iii. A provision that provides that statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum.
- b. The form and instructions for submission of Bids and any other special information.
- c. The time, date and place of Opening;
- d. The office where the Solicitation Document may be reviewed;
- e. A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in BPC 46-0110;
- f. Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
- g. How City will notify Bidders of Addenda and how City will make Addenda available (See BPC 47-0430).

2. City Need to Purchase.

The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 5 the City's description of its need to purchase must:

- a. Identify the scope of the work to be performed under the resulting Contract, if the City awards one;
- b. Outline the anticipated duties of the Contractor under any resulting Contract;
- c. Establish the expectations for the Contractor's performance of any resulting Contract; and
- d. Unless the City for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.

3. Bidding and Evaluation Process

A description of the bidding and evaluation process, including the following:

- a. The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- b. The City shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information the City has available concerning future use; and
- c. If the City intends to Award Contracts to more than one Bidder pursuant to BPC 47-0600(4)(c), the City shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

4. Preferences

Applicable preferences pursuant to ORS 279B.055(6)(b).

5. Contract Terms and Conditions

All contractual terms and conditions in the form of Contract provisions the City determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

- a. The City's reduction or withholding of payment under the Contract;
- b. The City's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
- c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

C. Good Cause.

For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:

1. The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
2. Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
3. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
4. Any other circumstances in which the City's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the City's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

47-0257 Multistep Sealed Bids

A. Generally.

The City may procure Goods or Services by using multistep sealed bidding pursuant to ORS 279B.055(12).

B. Phased Process.

Multistep sealed bidding is a phased Procurement process that seeks necessary information or un-priced technical Bids in the first phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the first phase to submit competitive sealed price Bids on the technical Bids in the second phase. The Contract shall be Awarded to the lowest Responsible Bidder.

C. Public Notice.

Whenever the City uses multistep sealed bidding, the City shall give public notice for the first phase in accordance with BPC 47-0300. Public notice is not required for the second phase. However, the City shall give notice of the second phase to all Bidders and inform Bidders of the right to protest Addenda issued after initial Closing pursuant to BPC 47-430 and inform Bidders excluded from the second phase of the right, if any, to protest exclusion pursuant to BPC 47-0720.

D. Procedures Generally.

In addition to the procedures set forth in BPC 47-0300 through 47-0490, the City shall employ the procedures set forth in this rule for multistep sealed bidding:

1. Solicitation Protest.

Prior to the Closing of phase one, the City shall provide an opportunity to protest the solicitation under BPC 47-0730.

2. Addenda Protest.

The City may, provide an opportunity to protest any Addenda issued after closing of phase one pursuant to BPC 47-0430(C)(2).

3. Exclusion Protest.

The City may, but is not required to provide an opportunity for a Bidder to protest exclusion from phase two of multistep sealed bidding as set forth in BPC 47-0720.

4. Administrative Remedy.

Bidders may submit a protest to any Addenda or to any action by City that has the effect of excluding the Bidder from the second phase of multistep sealed bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidder's failure to pursue an administrative remedy made available to the Bidder by the City.

5. Award Protest.

The City shall provide an opportunity to protest its intent to Award a Contract pursuant to BPC 47-0740. An Affected Bidder may protest, for any of the bases set forth in BPC 47-0720(B), its exclusion from the second phase of a multistep sealed bidding, or an Addendum issued following initial Closing, if the City did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

E. Procedure for Phase One of Multistep Sealed Bidding.

1. Form.

The City shall initiate multistep sealed bidding by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth in BPC 47-0255(2), the multistep Invitation to Bid shall state:

- a. That un-priced technical Bids are requested;
- b. Whether price Bids are to be submitted at the same time as un-priced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;

- c. That the solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose un-priced technical Bids are found eligible in the first phase;
 - d. The criteria to be used in the evaluation of un-priced technical Bids;
 - e. That the City, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the un-priced technical Bids;
 - f. That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid; and,
 - g. Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.
2. Addenda to the Invitation to Bid.
After receipt of un-priced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted un-priced technical Bids.
3. Receipt and Handling of Un-priced Technical Bids.
Un-priced technical Bids need not be opened publicly.
4. Evaluation of Un-Priced Technical Bids.
Un-priced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Un-priced technical Bids shall be categorized as:
- a. Eligible;
 - b. Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - c. Ineligible. The City shall record in writing the basis for determining a Bid ineligible and make it part of the Procurement file. The City may initiate phase two of the procedure if, in the City's opinion, there are sufficient eligible un-priced technical Bids to assure effective price competition in the second phase without technical discussions. If the City finds that such is not the case, the City may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (5)(e) of this rule.
5. Discussion of Un-priced Technical Bids.
The City may seek clarification of a technical Bid by any eligible or potentially eligible Bidder. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the second phase. Such submission may be made at the request of the City or upon the Bidder's own initiative.
6. Notice of Ineligible Un-priced Technical Bid.
When the City determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.
7. Mistakes During Multistep Sealed Bidding.
Mistakes may be corrected or Bids may be withdrawn during phase one:
- a. Before un-priced technical Bids are considered;
 - b. After any discussions have commenced under subsection (5)(e);
 - c. When responding to any Addenda of the Invitation to Bid; and
 - d. In accord with BPC 47-470.

8. Revisions to Solicitation Specifications.

After closing of phase one, the City may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The City shall provide such Addenda to all Bidders who initially submitted un-priced technical Bids. The City may then require Bidders to submit revised un-priced technical Bids.

F. Procedure for Phase Two of Multistep Sealed Bidding.

1. Initiation.

Upon the completion of phase one, the City shall invite each eligible Bidder to submit a price Bid.

2. Conduct.

Phase two shall be conducted as any other competitive sealed Bid Procurement except:

- a. As specifically set forth in this section;
- b. No public notice need be given of this invitation to submit price Bids because such notice was previously given.

47-0260 Competitive Sealed Proposals

A. Generally.

The City may procure Goods or Services by competitive sealed Proposals. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section B of this rule. The City shall provide public notice of the competitive sealed proposals as set forth in BPC 47-0300.

B. Request for Proposal.

In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

1. General Information.

The following general information:

- a. Notice of any pre-Offer conference as follows:
 - i. The time, date and location of any pre-Offer conference; and
 - ii. Whether attendance at the conference will be mandatory or voluntary; and
 - iii. A provision that provides that statements made by the City's representatives at the conference are not binding upon the City unless confirmed by Written Addendum.
- b. The form and instructions for submission of Proposals and any other special information.
- c. The time, date and place of Opening;
- d. The office where the Solicitation Document may be reviewed;
- e. Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
- f. How the City will notify Proposers of Addenda and how the City will make Addenda available. (See BPC 47-0430).

2. City Need to Purchase.

The character of the Goods or Services the City is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 6, the City's description of its need to purchase must:

- a. Identify the scope of the work to be performed under the resulting Contract, if the City awards one;

- b. Outline the anticipated duties of the Contractor under any resulting Contract;
- c. Establish the expectations for the Contractor's performance of any resulting Contract; and
- d. Unless the City for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the City is purchasing.

3. Proposal and Evaluation Process.

A description of the proposal and evaluation process, including the following:

- a. The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- b. The City shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the City;
- c. If the City's solicitation process calls for the Contracting Agency to establish a Competitive Range, the City shall state the size of the Competitive Range in the solicitation Document. However, the City may increase or decrease the number of proposers in the Competitive Range in accordance with BPC 47-0262(A)(1)(b).
- d. If the City intends to Award Contracts to more than one Proposer pursuant to BPC 47-0600(4)(d), the City must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

4. Preferences.

Applicable Preferences described in ORS 279A.125(2).

5. Contract Terms and Conditions.

All contractual terms and conditions the City determines are applicable to procurement. As required by Oregon Laws 2009, chapter 880, section 6, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

- a. The City's reduction or withholding of payment under the Contract;
- b. The City's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
- c. The City's rights, which the City may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

C. Contract Provisions

The City may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the City may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under BPC 47-0550(3), but the City may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under BPC 47-0420.

D. Multiple Award Contracts

The City may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The City shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under BPC 47-0420.

E. Good Cause.

For the purposes of this rule, “Good Cause” means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the City. The City shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. The City will have Good Cause to specify otherwise under the following circumstances:

- a. The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- b. Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
- c. The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- d. Any other circumstances in which the City’s interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the City’s practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

47-0261 Procedures for Competitive Range, Multi-tiered and Multistep Proposals

A. Generally.

The City may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in BPC 47-0300 through BPC 47-0490 for methods of Contractor selection the City may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range , or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers. The City may employ one or more or any combination of the procedures set forth in this rule for Competitive Range, multi-tiered and multistep Proposals.

B. Solicitation Protest.

Prior to the initial Closing, the City shall provide an opportunity to protest the solicitation under BPC 47-0730.

C. Addenda Protest.

The City may provide an opportunity to protest, pursuant BPC 47-0430, any Addenda issued pursuant to ORS 279B.060(6)(d).

D. Exclusion Protest.

The City may provide before the notice of intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in BPC 47-0720.

E. Administrative Remedy.

Proposers may submit a protest to any Addenda or to any action by the City that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer’s failure to pursue an administrative remedy made available to the Proposer by the City.

F. Award Protest.

The City shall provide an opportunity to protest its intent to Award a Contract pursuant to BPC 47-0740. An Affected Proposer may protest, for any of the bases set forth in BPC 47-0720(2), its exclusion from the Competitive Range or any phase of a multi-tiered or multistep sealed Proposal, or an Addendum issued following initial Closing, if the City did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

47-0262 Competitive Range, Discussions and Negotiations for Multi-tiered or Multistep Proposals

A. Competitive Range.

When the City's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the City to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:

1. Determining Competitive Range.

- a. The City shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the City shall determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, the City may establish a Competitive Range of all Proposers to enter into discussions with Proposers for the purpose of correcting deficiencies in Proposals under section 2 of this rule.
- b. The City may increase or decrease the number of Proposers in the Competitive Range if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater or less than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most advantageous Proposer.

2. Protesting Competitive Range.

The City shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. The City may provide an opportunity for Proposers excluded from the Competitive Range to protest the City's evaluation and determination of the Competitive Range in accordance with BPC 47-0720.

3. Intent to Award; Discuss or Negotiate.

After determination of the Competitive Range and after any protest period provided in accordance with subsection (1)(b) expires, or after the City has provided a final response to any protest, whichever date is later, the City may either:

- a. Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.
 - i. An unsuccessful Proposer may protest the City's intent to Award in accordance with BPC 47-0740.
 - ii. After the protest period provided in accordance with BPC 47-0740 expires, or after the City has provided a final response to any protest, whichever date is later, the City shall commence negotiations in accordance with section (3) of this rule the highest-ranked Proposer with Proposers in the Competitive Range; or
- b. Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.

B. Discussions; Revised Proposals.

If the City chooses to enter into discussions with and receive best and final Offers (See BPC 47-0262(D)) from all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers"), the City shall proceed as follows:

1. Initiating Discussions.

The City shall initiate oral or written discussions with all eligible Proposers regarding their Proposals with respect to the provisions of the Request for Proposals that the City identified in the Request for Proposal as the subject of discussions. The City may conduct discussions for the following purposes:

- a. Informing eligible Proposers of deficiencies in their initial Proposals;
- b. Notifying eligible Proposers of parts of their Proposals for which the City would like additional information; or

- c. Otherwise allowing eligible Proposers to develop revised Proposals that will allow the City to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

2. Conducting Discussions.

The City may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this Section 2, but need not conduct the same amount of discussions with each eligible Proposer. The City may terminate discussions with any eligible Proposer at any time. However, the City shall offer all eligible Proposers the same opportunity to discuss their Proposals with the City before the City notifies eligible Proposers of the date and time pursuant to section D that best and final Proposals will be due.

- a. In conducting discussions, the City:
 - i. Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
 - ii. Shall disclose other eligible Proposer's Proposals or discussions only in accordance with 279B.060(6)(a)(B) or (C);
 - iii. May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the RFP.
- b. At any time during the time allowed for discussions, the City may:
 - i. Continue discussions with a particular eligible Proposer;
 - ii. Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
 - iii. Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section 4 of this rule to the eligible Proposers requesting best and final Offers.

C. Negotiations.

1. Initiating Negotiations.

The City may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers as follows:

- a. After initial determination of which Proposals are Responsive; or
- b. After initial determination of the Competitive Range in accordance with section (1) of this rule; or
- c. After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section (2) of this rule).

2. Conducting Negotiations.

The City may conduct negotiations as follows:

- a. Scope. The City may negotiate:
 - i. The statement of work;
 - ii. The Contract Price as it is affected by negotiating the statement of work; and
 - iii. Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto. Accordingly, Proposers shall not submit, and the City shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposals or Addenda thereto.
- b. Terminating Negotiations. At any time during discussions or negotiations that the City conducts in accordance with sections (2) or (3) of this rule, the City may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the City reasonably believes that:
 - i. The eligible Proposer is not discussing or negotiating in good faith; or

- ii. Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

3. Continuing Serial Negotiations.

If the City is conducting serial negotiations and the City terminates negotiations with an eligible Proposer in accordance with paragraph 3(b)(B) of this rule, the City may then commence negotiations with the next highest scoring eligible Proposer, and continue the process described in section (3) of this rule until the City has either:

- a. Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or
- b. Completed one round of discussions or negotiations with all eligible Proposers, unless the City provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the City has completed all rounds of discussions or negotiations.

4. Competitive Simultaneous Negotiations.

If the City chooses to conduct competitive negotiations, the City may negotiate simultaneously with competing eligible Proposers. The City:

- a. Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
- b. May disclose other eligible Proposer's Proposals or the substance of negotiations with other eligible Proposers only if the City notifies all of the eligible Proposers with whom the City will engage in negotiations of the City's intent to disclose before engaging in negotiations with any eligible Proposer.

5. Modification of Proposal

Any oral modification of a Proposal resulting from negotiations under this section (3) shall be reduced to Writing by the Proposer.

D. Best and Final Offers.

If the City requires best and final Offers, the City shall establish a common date and time by which eligible Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the City may make a written determination that it is in the City's best interest to conduct additional discussions, negotiations or change the City's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. All eligible Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The City shall evaluate Offers as modified by the best and final Offer. The City shall conduct evaluations conducted as described in BPC 47-0600. The City shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

47-0263 Multistep Sealed Proposals

A. Generally.

The City may procure Goods or Services by using multistep competitive sealed Proposals.

B. Phased Process.

Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the first phase and invites Proposers who submitted technically qualified Proposals in the first phase to submit competitive sealed price Proposals on the technical Proposers in the second phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

C. Public Notice.

Whenever the City's uses multistep sealed Proposals, the City shall give public notice for the first phase in accordance with BPC 47-0300. Public notice is not required for the second phase. However, the City shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion pursuant to BPC 47-0720.

D. Procedure for Phase One of Multistep Sealed Proposals.

1. Form.

Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in BPC 47-0260(B), the multistep Request for Proposal shall state:

- a. That un-priced technical Proposals are requested;
- b. That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the second phase from those Proposers whose un-priced technical Proposals are found qualified in the first phase;
- c. The criteria to be used in the evaluation of un-priced technical Proposals;
- d. That the City, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;
- e. That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal; and,
- f. Whether Proposers excluded from the second phase have a right to protest the exclusion. Such information can be given or changed through Addenda.

2. Addenda to the Request for Proposal.

After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

3. Receipt and Handling of Un-priced Technical Proposals.

Un-priced technical Proposals need not be opened publicly.

4. Evaluation of Un-Priced Technical Proposals.

Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Un-priced technical Proposals shall be categorized as:

- a. Qualified;
- b. Potentially qualified; that is, reasonably susceptible of being made qualified; or
- c. Unqualified. The City shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The City may initiate phase two of the procedure if, in the City's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the second phase without technical discussions. If the City finds that such is not the case, the City shall issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in subsection D(e).

5. Discussion of Un-priced Technical Proposals.

The City may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the City shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the Closing of the second phase established by the City. Such submission may be made at the request of the City or upon the Proposer's own initiative.

6. Notice of Unqualified Un-priced Technical Proposal.

When the City determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.

7. Mistakes during Multistep Sealed Proposals.

Mistakes may be corrected or Proposals may be withdrawn during phase one:

- a. Before un-priced technical Proposals are considered;
- b. After any discussions have commenced under subsection D(e) of this rule;
- c. When responding to any Addenda to the Request for Proposal; or
- d. In accordance with BPC 47-470.

E. Methods of Contractor Selection for Phase One.

In conducting phase one, the City may employ any combination of the methods of Contractor section that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as sets forth in BPC 47-0261 and 47-0262. If the City uses such methods of Contractor selection, it shall follow the procedures set forth in BPC 47-0261 and 47-0262.

F. Procedure for Phase Two.

1. Initiation.

Upon the completion of phase one, the City shall invite each qualified Proposer to submit price Proposals.

2. Conduct.

The City shall conduct phase two as any other competitive sealed Proposal Procurement except:

- a. As specifically set forth in this rule; and
- b. No public notice need be given of the request to submit price Proposals because such notice was previously given.

EXEMPTIONS

(Most commonly used – See also chapter 50 providing additional exemptions)

47-0265 Small Procurements

Pursuant to BPC 50-0020 the City may Award a Contract of Goods or Services if the Goods or Services are valued less than or equal to \$5,000 as a small Procurement.

47-0270 Intermediate Procurements

Pursuant to BPC-50-0025 the City may Award a Contract of Goods or Services if the Goods and Services are valued at greater than \$5,000 and less than or equal to \$50,000 as an intermediate Procurement.

47-0275 Sole-source Procurements

Pursuant to BPC 50-0030 the City may Award a Contract without competition as a sole-source Procurement.

47-0280 Emergency Procurements

Pursuant to the requirements of BPC 50-0040 or BPC 49-0150 the City may Award a Contract as an Emergency Procurement. When an Emergency Procurement is authorized, the Procurement shall be made with competition that is practicable under the circumstances.

47-0285 Special Procurements

Pursuant to BPC 50-0015 the City may Award a Contract as a Special Procurement.

47-0290 Cooperative Procurements

The City may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in BPC 46-0400 through BPC 46-0480.

PROCUREMENT PROCESS

47-0300 Public Notice of Solicitation Documents

A. Notice of Solicitation Documents; Fee.

The City shall provide public notice of every Solicitation Document in accordance with section (B) of this rule. City may give additional notice using any method it determines appropriate to foster and promote competition, including:

1. Individual Notice
Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the City's Procurements;
2. Electronic Notice
Placing notice on the City's Electronic Procurement System; or
3. Website Notice
Placing notice on the City's Internet World Wide Web site.

B. Advertising.

The City shall advertise every notice of a Solicitation Document as follows:

1. Traditional Publication
City shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(4) or;
2. Electronic Publication
The City may publish the advertisement for Offers on the City's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the City's Contract Review Board has authorized the City to publish notice of Solicitation Documents on the City's Electronic Procurement System.

C. Content of Advertisement.

All advertisements for Offers shall set forth:

1. Where, when, how, and for how long the Solicitation Document may be obtained;
2. A general description of the Goods or Services to be acquired;
3. The interval between the first date of notice of the Solicitation Document given in accordance with subsection B(1) or (2) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the City determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection B(1) or (2) above and Closing be less than seven (7) Days. The City shall document the specific reasons for the shorter public notice period in the Procurement file;
4. The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;
5. The office where Contract terms, conditions and Specifications may be reviewed;
6. The name, title and address of the individual authorized by the City to receive Offers;

7. The scheduled Opening; and
8. Any other information the City deems appropriate.

D. Posting Advertisement for Offers.

The City shall post a copy of each advertisement for Offers at the principal business office of the City. An Offeror may obtain a copy of the advertisement for Offers upon request.

E. Fees.

The City may charge a fee or require a deposit for the Solicitation Document.

F. Notice of Addenda.

The City shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with BPC 47-0430.

47-0310 Bids or Proposals are Offers

A. Offer and Acceptance.

The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the City's acceptance for the period specified in BPC 47-0480 or BPC 49-0410. The City may elect to accept the Offer at any time during the specified period, and the City's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in BPC 47-0480, the City may elect to discuss or negotiate certain contractual provisions, as identified in these Rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by these Rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that these Rules or the Solicitation Document have reserved for negotiation.

B. Contingent Offers.

Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to BPC 47-0262, a Proposer shall not make its Offer contingent upon the City's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

C. Offeror's Acknowledgment.

By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms or conditions under BPC 47-0262, the Offeror's Offer includes any non-negotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the City in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

47-0320 Facsimile Bids and Proposals

A. City Authorization.

The City may authorize Offerors to submit facsimile Offers. If the City determines that Bid or Proposal security is or will be required, the City should not authorize facsimile Offers unless the City has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the City shall determine that the City's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the City shall establish administrative procedures and controls:

1. To receive, identify, record, and safeguard facsimile Offers;
2. To ensure timely delivery of Offers to the location of Opening; and
3. To preserve the Offers as sealed.

B. Provisions.

In addition to all other requirements, if the City authorizes a facsimile Offer, the City will include in the Solicitation Document the following:

1. A provision substantially in the form of the following: “A ‘facsimile Offer,’ as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the City via a facsimile machine”;
2. A provision substantially in the form of the following: “Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document”;
3. A provision that requires Offerors to Sign their facsimile Offers;
4. A provision substantially in the form of the following: “The City reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the City's request the apparent successful Offeror shall promptly submit its complete original Signed Offer”;
5. The data and compatibility characteristics of the City's receiving facsimile machine as follows:
 - a. Telephone number; and
 - b. Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and
6. A provision that the City is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents;
 - b. Availability or condition of the receiving facsimile machine;
 - c. Incompatibility between the sending and receiving facsimile machine;
 - d. Delay in transmission or receipt of documents;
 - e. Failure of the Offeror to properly identify the Offer documents;
 - f. Illegibility of Offer documents; and
 - g. Security and confidentiality of data.

47-0330 [Reserved]

BID AND PROPOSAL PREPARATION

47-0400 Offer Preparation

A. Instructions.

An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

B. Forms.

An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

C. Documents.

An Offeror shall provide the City with all documents and Descriptive Literature required by the Solicitation Document.

47-0410 Offer Submission

A. Product Samples and Descriptive Literature.

The City may require Product Samples or Descriptive Literature if the City determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The City will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

B. Identification of Offers.

1. Marked Envelopes

To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the City, whichever is applicable. If the City permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these Rules and the instructions set forth in the Solicitation Document. The City shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

2. Mismarked or Misdelayed Offers

The City is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

C. Receipt of Offers.

The Offeror is responsible for ensuring the City receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

47-0420 Pre-Offer Conferences

A. Purpose.

The City may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

B. Required Attendance.

The City may require attendance at the pre-Offer conference as a condition for making an Offer.

C. Scheduled Time.

If the City holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

D. Statements Not Binding.

Statements made by the City's representative at the pre-Offer conference do not change the Solicitation Document unless the City confirms such statements with a Written Addendum to the Solicitation Document.

E. City Announcement.

The City must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with BPC 47-0255(B) or BPC 47-0260(B).

47-0430 Addenda to Solicitation Document

A. Issuance; Receipt.

The City may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the City otherwise specifies in the Addenda.

B. Notice and Distribution.

The City shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the City will provide notice of Addenda and how the City will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the City will engage in a multistep competitive sealed Bid process in accordance with BPC 47-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with BPC 47-0261 through BPC 47-0263. The following is an example of how the City may specify how it will provide notice of Addenda: "City will not mail notice of Addenda, but will publish

notice of any Addenda on City's Web site. Addenda may be downloaded off the City's Web site. Offerors should frequently check the City's Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing.”

C. Timelines; Extensions.

1. The City shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The City may extend the Closing if the City determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the City shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
2. Notwithstanding subsection C(1) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and BPC 47-0261 through BPC 47-0263 must be issued no fewer than five Days before the beginning of that tier or step of competition, unless the City determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The City shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

D. Request for Change or Protest.

Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in BPC 47-0730, by the close of the City's next business day after issuance of the Addendum, or up to the deadline to submit a request for change or protest under BPC 47-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with BPC 47-0730, then the City may consider an Offeror's request for change or protest to the Addendum only, and the City shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (D) of this rule, the City is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

47-0440 Pre-Closing Modification or Withdrawal of Offers

A. Modifications.

An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the City in accordance with BPC 47-0400 and BPC 47-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

1. Bid (or Proposal) Modification; and
2. Solicitation Document Number (or other identification as specified in the Solicitation Document).

B. Withdrawals.

1. An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the City prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to City.
2. City may release an unopened Offer withdrawn under subsection B(1) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.
3. The Offeror shall mark the Written request to withdraw an Offer as follows:
 - a. Bid (or Proposal) Withdrawal; and
 - b. Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

C. Documentation.

City shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

47-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

A. Receipt.

The City shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. City shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If City inadvertently opens an Offer or a modification prior to the Opening, City shall return the Offer or modification to its secure and confidential state until Opening. City shall document the resealing for the Procurement file (e.g. "City inadvertently opened the Offer due to improper identification of the Offer.").

B. Opening and Recording.

The City shall publicly open Offers including any modifications made to the Offer pursuant to BPC 47-0440(A). In the case of Invitations to Bid, to the extent practicable, City shall read aloud the name of each Bidder, and such other information as City considers appropriate. However, City may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(5). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, City will not read Offers aloud.

47-0460 Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The City shall not consider late Offers, withdrawals or modifications except as permitted in BPC 47-470 or 47-0262.

47-0470 Mistakes

A. Generally.

To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, the City should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

B. City Treatment of Mistakes.

The City shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If City discovers certain mistakes in an Offer after Opening, but before Award of the Contract, City may take the following action:

1. The City may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:
 - a. Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - b. Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and
 - c. Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.
2. The City may waive or permit an Offeror to correct a mistake that does not affect the price, quantity or quality of performance.
3. The City may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the City's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item, or a missing, or incorrect total price for an item may be established by multiplying the

unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

4. The City may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:
 - a. The nature of the error;
 - b. That the error is not a minor informality under this subsection or an error in judgment;
 - c. That the error cannot be corrected or waived under subsection (3) of this section;
 - d. That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
 - e. That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
 - f. That the Offeror will suffer substantial detriment if City does not grant the Offeror permission to withdraw the Offer;
 - g. That the City's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on City or the public it represents; and
 - h. That the Offeror promptly gave notice of the claimed error to City.
5. The criteria in subsection B(4) of this rule shall determine whether the City will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether the City will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to City based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by City, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

C. Rejection for Mistakes.

City shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

D. Identification of Mistakes after Award.

The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this chapter 47 only to the extent permitted by applicable law.

47-0480 Time for City Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than 30 Days following Closing unless otherwise specified in the Solicitation Document.

47-0490 Extension of Time for Acceptance of Offer

The City may request, orally or in Writing, that Offerors extend, in Writing, the time during which City may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

QUALIFICATIONS AND DUTIES

47-0500 Responsibility of Bidders and Proposers

Before Awarding a Contract, the City shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. City shall use the standards set forth in ORS 279B.110 and BPC 47-0640(A)(3)(F) to determine if a Bidder or Proposer is Responsible. In the event the City determines a Bidder or Proposer is

not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

47-0525 Qualified Products Lists

The City may develop and maintain a qualified products list pursuant to ORS 279B.115.

47-0550 Prequalification of Prospective Offerors

- A. The City may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.
- B. Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), the City may determine that a prequalified Offeror is not Responsible prior to Contract Award.
- C. The City may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the City and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. The City may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When the City has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, the City may consider the terms and conditions in the Proposal evaluation process.

47-0575 Debarment of Prospective Offerors

A. Generally.

The City may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

B. Responsibility.

Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), the City may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

C. Imputed Knowledge.

The City may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

D. Limited Participation.

The City may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to the City. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

OFFER EVALUATION AND AWARD

47-0600 Offer Evaluation and Award

A. General Principle.

City shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. City shall not evaluate Offers using any other requirement or criterion.

1. Evaluation of Bids.

Bids shall be evaluated in accordance with the following:

- a. Nonresident Bidders. In determining the lowest Responsive Bid, City shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and BPC 46-0310 for Nonresident Bidders.
- b. [Reserved].
- c. Award When Bids are Identical. If City determines that one or more Bids are identical under BPC 46-0300, City shall Award a Contract in accordance with the procedures set forth in BPC 46-0300.

2. Evaluation of Proposals.

Proposals shall be evaluated in accordance with the following:

- a. Award When Proposals are Identical. If City determines that one or more Proposals are identical under BPC 46-0300, City shall Award a Contract in accordance with the procedures set forth in BPC 46-0300.
- b. [Reserved].

3. Recycled Materials.

When procuring Goods, City shall give preference for recycled materials as set forth in ORS 279A.125 and BPC 46-0320.

B. Clarification of Bids or Proposals.

After Opening, the City may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the City's sole discretion, needing clarification must be accorded such an opportunity. The City shall document clarification of any Bidder's or Proposer's Bid or Proposal in the Procurement file.

C. Negotiations.

1. Bids.

The City shall not negotiate with any Bidder. After Award of the Contract the City and Contractor may only modify the Contract in accordance with BPC 50-0035.

2. Requests for Proposals.

The City may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and BPC 47-0262. After Award of the Contract, the City and Contractor may only modify the Contract in accordance with BPC 50-0035.

D. Award.

1. General.

If Awarded, City shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. City may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

2. Multiple Items.

An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a “market basket” of items representative of City’s expected purchases, or grand total of all items.

3. Multiple Awards - Bids.

Multiple Awards under a single Invitation to Bid is permissible under the following circumstances:

- a. Notwithstanding subsection D(1) of this rule, the City may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet City’s needs, including but not limited to adequate availability, delivery, service, or product compatibility and skills. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude City from Awarding a single Contract for such Invitation to Bid.
- b. If an Invitation to Bid permits the Award of multiple Contracts, City shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

4. Multiple Awards – Proposals.

Multiple Awards under a single Request for Proposal is permissible under the following circumstances:

- a. Notwithstanding subsection D(1) of this rule, the City may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet City’s needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude City from Awarding a single Contract for such Request for Proposals.
- b. If a Request for Proposals permits the Award of multiple Contracts, City shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.

5. Partial Awards.

If after evaluation of Offers, City determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

- a. City may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or
- b. City may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

6. All or none Offers.

The City may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

47-0610 Notice of Intent to Award

A. Notice of Intent to Award.

Unless otherwise provided in the Solicitation Document:

1. Notice of Intent to Award.

The City shall provide Written notice to all bidders and proposers of the City's intent to award the Contract at least 7 Days before the Award of a Contract, unless City determines that circumstances require prompt execution of the Contract, in which case City may provide a shorter notice period. City shall document the specific reasons for the shorter notice period in the Procurement file.

2. Form of Notice

The referral of a recommendation to the Contract Review Board to Award a Contract is sufficient notice of the City's intent to award the Contract.

3. Exceptions

The City's obligation to provide notice of its intent to award a contract does not apply to a contract awarded pursuant to an exception or exemption from competitive solicitation, such as a contract awarded as a small procurement under ORS 279B.065, an intermediate procurement under ORS 279B.070, a sole-source procurement under ORS 279B.075, an emergency procurement under ORS 279B.080 or a special procurement under ORS 279B.085.

B. Finality.

City's Award shall not be final until the later of the following:

1. The expiration of the protest period provided pursuant to BPC 47-0740; or
2. The provision by the City of Written responses to all timely-filed protests denying the protests and affirming the Award.

47-0620 Documentation of Award

A. Basis of Award.

After Award, City shall make a record showing the basis for determining the successful Offeror part of City's Procurement file.

B. Contents of Award Record.

City's record shall include:

1. For Bids:

- a. Bids;
- b. Completed Bid tabulation sheet; and
- c. Written justification for any rejection of lower Bids.

2. For Proposals:

- a. Proposals;
- b. The completed evaluation of the Proposals;
- c. Written justification for any rejection of higher scoring Proposals; and
- d. If City engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and BPC 47-0261 through 47-0263, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures City used to select a Proposer to which City Awarded a Contract.

47-0630 Availability of Award Decisions

A. Contract Documents.

To the extent required by the Solicitation Document, City shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

B. Availability of Award Decisions.

A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to City a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, City may make available tabulations of Bids and Proposals through the Electronic Procurement System of City or City's Web site.

C. Availability of Procurement Files.

After notice of intent to Award, City shall make Procurement files available in accordance with applicable law. City will make copies of non-confidential material from procurement files available upon payment of a reasonable coping charge.

47-0635 Contract Requirements

In addition to all applicable provisions that are required for legal sufficiency and for sound Contract management, all Personal Services Contracts shall include, without limitation, the following:

1. A measurable Statement of Work within the scope of the solicitation, an established delivery schedule, Contractor and City duties and responsibilities;
2. The total sum of money to be paid for the satisfactory accomplishment of the work;
3. A billing and payment schedule. Interim payments may be made for partial completion of tasks or services. When a Contract specifies an end product, an amount up to 10 percent of the total Contract amount may be withheld until all required work is completed and accepted;
4. A provision that payments will be made for completed work that is accepted by the City Purchasing Agent, unless other payment provisions are approved by the City Attorney;
5. Certification that sufficient City funds are available and authorized for expenditure to finance costs of the Contract within the City's appropriation or limitation covering the time period(s) of the Contract;
6. A provision indicating whether subcontracts for any of the work scheduled under the Contract may be entered into without prior Written approval from the City;
7. Provisions for termination by the City, including the manner by which it will be affected. The Contract shall describe conditions under which the Contract may be terminated for default as well as conditions under which the Contract may be terminated because of circumstances beyond the City's control;
8. Notice of any potential Contract amendments in accordance with the solicitation;
9. A provision that if charges are made for services performed and are to be paid by grant funds, the services shall relate directly to the grant from which the funds are expended;
10. A provision that the City, State and federal government, and their duly authorized representatives, shall have access to the Contractor's books, documents, papers and records directly pertinent to the Contract for the purpose of making audit, examination, excerpts and transcripts;
11. A provision that the Contract is subject to all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
12. A provision that the parties shall comply with any state or federal law or regulation specific to the funding source supporting the Contract.

To protect or advance the interests of the City, the City Attorney may modify these or approve other Contract terms.

47-0636 Independent Contractor Status

A. Service Providers Usually Not Employees

The City shall develop a Statement of Work for services that will not result in an employee relationship with the potential Contractor. The City and Contractor shall sign a Personal Services Contract that includes provisions certifying the service provider is an Independent Contractor. If the individual cannot certify Independent Contractor status, the City may not Contract with the individual using a Personal Services Contract, except as otherwise allowed in subsection D of this section.

B. All Employees Hired Through Personnel Procedures

If the nature of the services or project is such that an employee/employer relationship will exist, the City shall not enter into a Contract except as otherwise allowed in subsection D of this section.

C. Required Contract Provisions

The Contract shall include:

1. The Contractor's legal name, address, and Social Security or federal tax identification number; and
2. A provision that the Contractor is responsible for federal Social Security, except those categories excluded by law, and for any federal or state taxes applicable to the Contract payment.

D. Doubtful Independent Contractors

When an individual cannot certify that he or she is an Independent Contractor, the City may Contract with the individual using a Personal Services Contract only if the Mayor or Finance Director, in consultation with the City Attorney, approves the use of a Personal Services Contract upon a determination by the Mayor or Finance Director that the Contractor is an Independent Contractor and the Contract will not result in undue risk to the City.

47-0637 Non-Assignability of Personal Service Contracts

Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the City's prior Written consent. Unless otherwise agreed by the City in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the City consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in Writing.

47-0640 Rejection of an Offer

A. Rejection of an Offer.

1. The City may reject any Offer as set forth in ORS 279B.100.
2. City shall reject an Offer upon City's finding that the Offer:
 - a. Is contingent upon City's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - b. Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;
 - c. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;
 - d. Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;
 - e. Is late;
 - f. Is not in substantial compliance with the Solicitation Document; or

- g. Is not in substantial compliance with all prescribed public Procurement procedures.
3. City shall reject an Offer upon City's finding that the Offeror:
- a. Has not been prequalified and City required mandatory prequalification;
 - b. Has been Debarred as set forth in ORS 279B.130 or has been disqualified for the reasons set forth in ORS 279A.110;
 - c. Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;
 - d. Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
 - e. Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or
 - f. Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, City must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, City must determine pursuant to ORS 279B.110 that the Offeror:
 - i. Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities; and
 - ii. Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. The City should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, City should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. City may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. City shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);
 - iii. Has a satisfactory record of integrity. An Offeror may lack integrity if the City determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the City. The City may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The City may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. City shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);
 - iv. Is legally qualified to contract with City; and
 - v. Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by City concerning Responsibility, City shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

B. Form of Business Entity.

For purposes of this rule, City may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

47-0650 Rejection of All Offers

A. Rejection.

The City may reject all Offers as set forth in ORS 279B.100. City shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

B. Criteria.

City may reject all Offers based upon the following criteria:

1. The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;
2. The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;
3. Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
4. Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
5. City cancels the Procurement or solicitation in accordance with BPC 47-0660; or
6. Any other circumstance indicating that Awarding the Contract would not be in the public interest.

47-0660 Cancellation of Procurement or Solicitation

A. Cancellation in the Public Interest.

The City may cancel a Procurement or solicitation as set forth in ORS 279B.100.

B. Notice of Cancellation Before Opening.

If City cancels a Procurement or solicitation prior to Opening, City shall provide Written notice of cancellation in the same manner that City initially provided notice of the solicitation. Such notice of cancellation shall:

1. Identify the Solicitation Document;
2. Briefly explain the reason for cancellation; and
3. If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

C. Notice of Cancellation After Opening.

If City cancels a Procurement or solicitation after Opening, City shall provide Written notice of cancellation to all Offerors who submitted Offers.

47-0670 Disposition of Offers if Procurement or Solicitation Canceled

A. Prior to Opening.

If City cancels a Procurement or solicitation prior to Opening, City shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, City shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, City shall delete the Offers from City's Electronic Procurement System or information technology system.

B. After Opening.

If City cancels a Procurement or solicitation after Opening, City:

1. May return Proposals in accordance with ORS 279B.060(5)(c); and.

2. Shall keep Bids in the Procurement file.

C. Rejection of All Offers.

If City rejects all Offers, City shall keep all Proposals and Bids in the Procurement file.

47-0680 Approval of Personal Service Contracts

Before the City executes a Personal Services Contract that calls for payment in excess of \$1,000 in a single fiscal year, the City Attorney shall determine (and, where appropriate, approve) the legal sufficiency of the Contract. This subsection does not apply if:

1. The Contract is substantially composed of forms, terms or conditions that have been pre-approved by the City Attorney; or
2. Circumstances exist that create a substantial risk of loss, damage, interruption of services or threat to public health or safety and that require prompt execution of a Contract to deal with the risk.

All requisite approvals must be obtained before any Personal Service Contract entered into by the City becomes binding upon it and before any service may be performed or payment made under the Contract.

47-0690 Ratification

If the parties to a Personal Services Contract perform under the Contract before the City Attorney approves the Contract for legal sufficiency as required by these Rules, the City, acting through its Contract Review Board, may ratify the Contract if the City Attorney determines that the Contract is legally sufficient prior to ratification. As a condition for approval, the City Attorney may require that the Contract be amended as necessary to make the Contract legally sufficient.

Upon approval of the Personal Services Contract for legal sufficiency and ratification of the Contract by the City under this section, the Contract is effective and the City may make payments on the ratified Contract even if the payments are for services rendered before ratification.

LEGAL REMEDIES

47-0700 Protests and Judicial Review of Special Procurements

A. Purpose.

An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Board and exhaust all administrative remedies.

B. Delivery.

Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Board or designee within 7 Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Board, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

C. Content of Protest.

The Written protest must include:

1. A detailed statement of the legal and factual grounds for the protest;
2. A description of the resulting harm to the Affected Person; and
3. The relief requested.

D. Contract Review Board.

The Contract Review Board shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Board shall issue a Written disposition of the protest in a timely manner. If the Contract Review Board upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

E. Judicial Review.

An Affected Person may seek judicial review of the Contract Review Board's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

47-0710 Protests and Judicial Review of Sole-Source Procurements

A. Purpose.

For sole-source Procurements requiring public notice under BPC 47-0275, an Affected Person may protest the determination of the Contract Review Board or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Board or designee and exhaust all administrative remedies.

B. Delivery.

Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Board or designee within seven Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

C. Content of Protest.

The Written protest must include:

1. A detailed statement of the legal and factual grounds for the protest;
2. A description of the resulting harm to the Affected Person; and
3. The relief requested.

D. Contract Review Board Response.

The Contract Review Board or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Board or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Board or designee upholds the protest, in whole or in part, City shall not enter into a sole-source Contract.

E. Judicial Review.

Judicial review of the Contract Review Board's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

47-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

A. Purpose.

An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with City and exhaust all administrative remedies.

B. Basis for Protest.

An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and, but for City's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from

consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or City committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

C. Delivery.

Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to City within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

D. Content of Protest.

The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

E. City Response.

City shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. City shall issue a Written disposition of the protest in a timely manner. If City upholds the protest, in whole or in part, City may in its sole discretion either issue an Addendum under BPC 47-0430 reflecting its disposition or cancel the Procurement or solicitation under BPC 47-0660.

F. Judicial Review.

Judicial review of City's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

47-0730 Protests and Judicial Review of Solicitations

A. Purpose.

A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with City and exhaust all administrative remedies.

B. Delivery.

Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to City not less than ten (10) Days prior to Closing.

C. Content of Protest.

In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

D. City Response.

City shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. City shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). City shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If City upholds the protest, in whole or in part, City may in its sole discretion either issue an Addendum reflecting its disposition under BPC 47-0430 or cancel the Procurement or solicitation under BPC 47-0660.

E. Extension of Closing.

If City receives a protest from a prospective Offeror in accordance with this rule, City may extend Closing if City determines an extension is necessary to consider and respond to the protest.

F. Clarification.

Prior to the deadline for submitting a protest, a prospective Offeror may request that the City clarify any provision of the Solicitation Document. City's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on City unless City amends the Solicitation Document by Addendum.

G. Judicial Review.

Judicial review of City's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

47-0740 Protests and Judicial Review of Contract Award

A. Purpose.

An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with City and exhaust all administrative remedies before seeking judicial review of City's Contract Award decision.

B. Delivery.

Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to City within seven (7) Days after the Award of a Contract, or issuance of the notice of intent to Award the Contract, whichever occurs first.

C. Content of Protest.

An Offeror's Written protest shall specify the grounds for the protest to be considered by City pursuant to ORS 279B.410(2).

D. City Response.

City shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. City shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If City upholds the protest, in whole or in part, City may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

E. Judicial Review.

Judicial review of City's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

47-0745 Protests and Judicial Review of Qualified Products List Decisions

A. Purpose.

A prospective Offeror may protest City's decision to exclude the prospective Offeror's Goods from City's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of City's qualified products list decision.

B. Delivery.

Unless otherwise stated in City's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to City within seven (7) Days after issuance of City's decision to exclude the prospective Offeror's Goods from the qualified products list.

C. Content of Protest.

The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

D. City Response.

City shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in City's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. City shall issue a Written disposition of the protest in a timely manner. If City upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

E. Judicial Review.

Judicial review of City's decision relating to a qualified products list protest shall be in accordance with ORS 279B.420.

47-0750 Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by the City for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

47-0760 Review of Prequalification and Debarment Decisions

Review of City's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.